

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

United States of America

v.

Duane Loyd,

Defendant.

---

**Decision and Order**

16-CR-13A

On September 28, 2017, defendant Duane Loyd filed a motion under seal (Dkt. No. 78) to suppress certain evidence that the Government would produce against him at trial. The Government has responded to the motion (Dkt. No. 83) and opposes suppression. At oral argument on October 23, 2017, the Government reiterated its overall opposition but conceded that defendant is entitled to a hearing with respect to some of the issues that the motion has raised.

After reviewing the motion papers and considering the points raised at oral argument, the Court agrees that a hearing is warranted. The Court also agrees with the Government that defendant's own motion has, at a minimum, satisfied the initial inquiry as to whether defense counsel has a conflict of interest—if not for trial then at least for purposes of resolving the motion. See *United States v. Kliti*, 156 F.3d 150, 153 (2d Cir. 1998); *United States v. Levy*, 25 F.3d 146, 153 (2d Cir. 1994) (“When a district court is sufficiently apprised of even the possibility of a conflict of interest, the court first has an ‘inquiry’ obligation.”) (citations omitted). Whether a conflict exists should be addressed before turning to the substance of defendant's motion.

The Court will hold a *Curcio* hearing on November 16, 2017 at 10:00 AM. Meanwhile, the Court will arrange for appointment of *Curcio* counsel and will encourage that counsel to consult with defendant before November 16 if possible. Speedy-trial time remains excluded because pretrial motions remain pending.

SO ORDERED.

/s/ *Hugh B. Scott*  
Hon. Hugh B. Scott  
United States Magistrate Judge

DATED: November 1, 2017